Supreme Court, U.S.
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No. 02-1461

IN THE

United States Supreme Court

OCTOBER TERM, 2002

CHRISTOPHER F. SHERIDAN,

Petitioner,

vs.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Respondent.

On Petition For A Writ of Certiorari
To The Appellate Division of the Supreme Court of the State of New York,
First Judicial Department

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Appellate Division of the Supreme Court of the State of New York, First Judicial Department has held that a university *degree-holder* conferred a degree in the State of New York has no more right to have his transcript released than that of a student; that a university's refusal to forward a *degree holder's* transcript to a graduate school and certify his degree does not revoke the degree, does not violate the university's charter or the New York Education Law, and does not breach the duty of a university to honor the privileges and immunities granted to *degree-holders* by the New York State Legislature. The holding raises three substantial federal questions that warrant review by this Court:

1. Whether the state court erred in establishing a judicial revision to the statutory privileges and immunities entitlement granted by the New York State Legislature to all university *degree-holders* conferred a degree in New York, in violation of the Equal Protection or Due Process Clauses of the Fourteenth Amendment.

2. Whether Respondent Columbia University, in performing its legislatively delegated degree conferring powers, violated the *1810 Charter* of Columbia University, the Education Law of the State of New York and the Equal Protection Clause of the Fourteenth Amendment, in discriminating against Petitioner by refusing to certify to graduate schools Petitioner's lawfully conferred degree.

3. Whether the state court's decision, which cannot be reconciled with state statutes, violates the Equal Protection Clause or Due Process Clause by permitting univer-

sities to discriminate against *degree-holders* in the certification of degrees to third-party graduate schools or employers.

PARTIES TO THE PROCEEDING

The following individuals and entities were parties to the proceeding in the court below:

Christopher F. Sheridan as Plaintiff-Appellant-Respondent

The Trustees of Columbia University In The City of New York as Defendant-Respondent-Appellant

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Christopher F. Sheridan, a graduate of Columbia University who possesses a lawfully conferred degree, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department ("Appellate Division") in this case. The Court of Appeals of the State of New York denied Petitioner's motion for leave to appeal the Appellate Division's decision and order. In contravention of the Fourteenth Amendment of the Constitution of the United States, as well as the legislatively enacted *1810 Charter* of Columbia University and Article 5, Section 226(9) of the Education Law of the State of New York, the Appellate Division judicially revised New York statutes that provide that all degree-holders shall be entitled to equal privileges and immunities. The Appellate Division's decision upheld Columbia University's unlawful and unconstitutional discrimination of Petitioner in its unlawful refusal to certify his degree to graduate schools, thereby rendering Petitioner ineligible to graduate schools for the past thirteen years. Because, as one court has stated, an academic degree is *"worthy of legal protection"*, and that equal protection afforded to all degree-holders by the New York Legislature was unlawfully circumvented by Columbia University and the Appellate Division, the Petitioner's constitutional rights to equal protection and due process were violated.

OPINIONS BELOW

The Decision and Order of the Supreme Court of New York, Appellate Division, First Department ("Appellate Division"), dismissing Petitioner's Complaint in full, entered on July 2, 2002, is reported as 745 N.Y.S.2d 18, 167 Ed. Law Rep. 326, 2002 N.Y. Slip Op 05530 (App., *infra*, 1). Petitioner's Motion for Reargument to the Appellate Division, which was denied by Order of the Appellate Division, entered on October 8, 2002, was not reported (App., *infra*, 2). The Order of the New York Court of Appeals denying Petitioner's Motion for Leave to Appeal to the Court of Appeals, entered on *January 9, 2003*, was not reported (App., *infra*, 3). The order of the Supreme Court of New York dismissing Petitioner's Complaint in part, entered on January 1, 2001, was not reported (App., *infra*, 4). The Order of the Supreme Court of New York granting Respondent reargument of its motion to dismiss Petitioner's Complaint and dismissing Petitioner's Complaint in part, entered on October 4, 2001, was not reported (App., *infra*, 5).

JURISDICTION

The Decision and Order of the Appellate Division sought to be reviewed was entered on July 2, 2002. The order of the Appellate Division denying reargument and leave to appeal to the Court of Appeals was entered on October 8, 2002. The Order of the New York Court of Appeals denying Petitioner leave to appeal to the Court of Appeals was entered on *January 9, 2003*. This Petition is timely pursuant to Rule 13.1 of the Supreme Court

Rules. The jurisdiction of this Court rests upon 28 U.S.C. § 1257.

The decision of the Appellate Division dismissed Petitioner's Complaint which pled, *inter alia*, that it was, and is, unlawful for Columbia University to withhold certification of Petitioner's degree to graduate schools, since the statutory law of New York provides that *all degree-holders* are entitled to equal privileges and immunities. Certification of one's degree, through release of an official transcript, is clearly a privilege that vests with a lawfully conferred college degree. The Appellate Division, affirming the lower court's decision in part and modifying the decision in part, dismissed Petitioner's Complaint in its entirety. In dismissing the Complaint, the Appellate Division ruled on the interpretation of the legislatively enacted 1810 Charter of Columbia University ("*1810 Charter*") and the legislatively enacted Education Law, Article 5, Section 226(9) ("Education Law § 226(9)"). The judgment of the Appellate Division below is "final" for the purposes of this Court's jurisdiction under § 1257. Moreover, the decision of the Appellate Division now represents the *judicial* rule of law in the State of New York as to the interpretation of the *1810 Charter* and Education Law § 226(9), which are statutes enacted by the New York State Legislature. (See *1810 Charter* and Education Law § 226(9), *infra*; see also *McKinney's Consolidated Laws of New York Annotated, Book 16, Education Law*, 2003 Cumulative Pocket Part, § 226, Powers of Trustees of Institutions, Note 8 (Issuance of Degrees), pages 7-8.)

As more specifically demonstrated, *infra*, Petitioner raised below the express statutory provision contained in

the *1810 Charter* that prohibits Columbia from enacting any by-law or ordinance that violates the Constitution of the United States. The Appellate Division, by ruling that Respondent did not violate the *1810 Charter* or Education Law § 226(9), ruled *sub silencio* that Columbia's action did not violate Petitioner's constitutional rights and, furthermore, the Appellate Division judicially revised express legislative enactments in violation of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in relevant part, that "*no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;* ***nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***" (emphasis added) **U.S. CONST. amend. XIV, 1.**

Section VII of the *1810 Charter* provides, *"And it be further enacted, that the said trustees and their successors shall have power and authority to grant all such literary honors and degrees, as are usually granted by any university, college or seminary of learning in this state, or in the United States; and in testimony of such grant to give suitable diplomas under their seal, and the signatures of the president and such professors, or tutors of the college, as they shall judge expedient,* ***which diplomas shall entitle the possessors respectively to all the immunities and privileges which either by usage or statute are***

allowed to possessors of similar diplomas from any university, college or seminary of learning". (emphasis added) *Public Laws of the State of New York passed at the Thirty-third Session of the Legislature Begun and Held at the City of Albany, January 30, 1810* (Webster's and Skinner's Public Laws of the State of New York, Volume VI (1812) (Section VII is inexplicitly duplicated in the *1810 Charter* as Section VIII).

Section IX of the *1810 Charter* provides, *"And it be further enacted, that the said trustees, and their successors, shall have full power and authority to make all ordinances and bye-laws which to them shall seem expedient for carrying into effect the designs of their institution; Provided always,* ***that such ordinances or bye-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, nor be inconsistent with the constitution and laws of this state, nor with the constitution and laws of the United States."*** (emphasis added) P*ublic Laws of the State of New York, passed at the Thirty-Third Session of the Legislature Begun and Held at the City of Albany, January 30, 1810* (Websters and Skinners Public Laws of the State of New York, Volume VI, 1812).

Article 5, Section 226(9) of the Education Law of the State of New York provides, *"Degrees and credentials. Grant such degrees and honors as are specifically authorized by their charter, and in testimony thereof give suitable certificates and diplomas under their seal;* ***and every certificate or diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any institution of***

learning." (emphasis added) *McKinney's Consolidated Laws of New York Annotated, Book 16, Education,* Article 5, Section 226(9).

Article 11 Section 2 of the New York State Constitution provides, ***"[Regents of the University]*** *The corporation created in the year one thousand seven hundred eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of the University of the State of New York.* ***It shall be governed and its corporate powers, which may be increased, modified or diminished by the legislature, shall be exercised by not less than nine regents."*** (emphasis added). *McKinney's Consolidated Laws of New York Annotated, Book 2 Constitution* Article 11, Section 2, 2003 Pocket Part, page 99. (As Amended Nov. 6, 2001, eff Jan. 1. 2002.)

Article 5, Section 224(4) of the Education Law of the State of New York provides, ***"No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person, with intent to deceive, falsely represent himself to have received any such degree or credential, nor shall any person append to his name any letters in the same form registered by the regents as entitled to the protection accorded to university degrees, unless he shall have received from a duly authorized institution the degree or certificate for which the letters are registered. Counterfeiting or falsely or without authority making or altering in a material respect any such credential issued under seal shall be a felony; any other violation of this section shall be a misdemeanor;*** *and any person who*

aids or abets another, or advertises or offers himself to violate the provisions of this section, shall be liable to the same penalties" (emphasis added). *McKinney's Consolidated Laws of New York Annotated, Book 16, Education*, Article 5, Section 224(4).

Article 5, Section 219(4) of the Education Law of the State of New York provides, ***"Whenever the charter or incorporation of an institute is revoked or an order of dissolution made pursuant to the provisions of this section, it shall be the duty of the trustees and/or the custodians of the permanent academic records of such institution to file the same with the state education department, or with such other agency as may be approved by said department where they shall be kept available for future reference.*** *In the event, however, that an application is made to the supreme court for an order directing the disposition of assets of such education corporation pursuant to the provisions of section two hundred twenty of this chapter and such order is thereupon made, the disposition of such permanent academic records may be directed therein. A copy of the order shall be filed with the education department by the application and such order shall so provide."* (emphasis added). *McKinney's Consolidated Laws of New York State , Book 16, Education*, Article 5, Section (219)(4).

STATEMENT OF THE CASE

I. The Underlying Litigation

Petitioner graduated from Columbia University (hereinafter "Columbia") and was lawfully conferred a B.A. degree in 1990 with all privileges and immunities as so granted by the New York State Legislature. Since 1990, Columbia has refused to release Petitioner's transcript to graduate schools until he "satisfies in full" alleged financial obligations to Columbia. Columbia bases its arbitrary and discriminatory action on a "student policy". Petitioner is currently serving on active duty in the United States Army, having enlisted in 1996 following Columbia's numerous refusals to release his transcript to graduate schools.[1] Petitioner completed his active duty in 1999, however, as a result of the recent national emergency, he has been recalled to active duty where he is currently serving with a combat unit in the Middle East.

Although Petitioner financed his education at Columbia University with federal loans and money he earned from part-time and summer employment, in 1990 Columbia's Financial Aid Office failed to process some of his federal loans and Petitioner graduated from Columbia with a portion of his school debt owed directly to Colum-

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[1] However, in 1996, after Plaintiff enlisted in the U.S. Army, Columbia released Petitioner's transcript to the Army. This arbitrary certification of Petitioner's degree, combined with Columbia's continued and arbitrary revoking of such certification, illustrates Columbia's unlawful abuse of its limited charter and statutory powers. (See Sheridan Transcript certifying his degree to the U.S. Army, App., *infra* 6)

bia.[2] Since he was conferred his degree in 1990, Petitioner has made numerous payments to Columbia and has attempted to satisfy the alleged amount owed, although he has never been given an accounting by Columbia, nor an installment payment plan. Columbia has never declared Petitioner in default of any amounts allegedly due and has never commenced an action in a court of law to recover the alleged amounts due. Petitioner made a payment of $1,600 to Columbia as recently as January 2000. This case, therefore, was never about a graduate refusing to pay for tuition or other college related fees.[3] In February 2000, after Columbia once again refused to release his transcript to Harvard Business School, Petitioner filed a Complaint alleging, *inter alia*, that Columbia was prohibited from withholding a *degree-holder's* transcript because *degree-holders* are entitled by law to equal privileges and immunities.[4] The Appellate Division modified, in part, and otherwise affirmed the New York Supreme Court's prior Orders, and dismissed Petitioner's

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[2] Petitioner was raised in a single parent family. His mother supported him and his two sisters by working for twenty-five years as an administrative worker for the New York State Department of Labor. Petitioner financed 100% of his education by working part time and with federal and state loans. It would be, therefore, fair to conclude that Petitioner comes from an economically underprivileged background.

[3] Petitioner has paid off the majority of his federal and state school loans that were independent of the amount owed directly to Respondent Columbia University. Petitioner has never declared bankruptcy.

[4] Columbia refused to release Petitioner's transcript to Fordham University School of Law in 1994 and Dartmouth Graduate Business School in 1996.

Complaint in its entirety, including Petitioner's request for a declaratory judgment declaring that Columbia is prohibited by law from withholding a *degree-holder's* transcript. By Order, dated October 8, 2002, the Appellate Division, First Department, denied Plaintiff's Motion for Reargument and Motion For Leave to Appeal to the Court of Appeals.

By order, dated January 9, 2003, the New York Court of Appeals denied Petitioner's motion for Leave to the Court of Appeals, thus exhausting all Petitioner's attempts at judicial relief in the State of New York.

II. Federal Issues Were Raised And Ruled On Below

Columbia's "policy" of withholding a *degree-holder's* transcript violates the Equal Protection Clause because the statutory law of New York mandates that all possessors of degrees *shall* be entitled to equal privileges and immunities and Petitioner was denied those privileges. Moreover, Petitioner raised before The Appellate Division the express statutory provision from the *1810 Charter*, Section IX, that prohibits Columbia from enacting any by-law, ordinance or "policy" that violates the Constitution of the United States.[5] Columbia opposed Petitioner's assertion of the constitutional issue by arguing

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[5] Section IX of the *1810 Charter* states in relevant part: ". . . *Provided always, that such ordinances or bye-laws shall not make the religious tenets of any person a condition of admission to any privilege or office in the said college, nor be inconsistent with the constitution and laws of this State, nor with the constitution and laws of the United States*" (Sheridan Reply Brief, Pages 1-2, App. *Infra* 7).

that Columbia is a private entity and, therefore, there was no state action.[6]

The Appellate Division did not specifically rule on the constitutional issue, but ruled sub silencio that Columbia had not violated its *1810 Charter* or the Education Law. This Court has held that a state court cannot evade this Court's review by failing to discuss federal questions in its opinion. *Chapman* v. *GoodNow's Adm'r.*, 123 U.S. 540, 548 (1887). Whether or not a federal question was raised below is *"itself ultimately a federal question, as to which this Court is not bound by the decision of the state courts."* *Street* v. *New York*, 394 U.S.516, 583 (1969). Moreover, this Court has a duty to determine *"precisely the ground on which the judgment rests"*. *Black* v. *Cutter Labs.*, 351 U.S. 292, 298 (1956). In the instant case, in upholding Columbia's unconstitutional "policy", the Appellate Division actually relied on a statutory section, Section IX of the *1810 Charter*, that expressly prohibits Columbia from enacting by-laws, ordinances or "policies" that violate the Constitution of the United States.

The Appellate Division's decision, which judicially revised a statute, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution. A *degree-holder*, having been granted priv-

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[6] Columbia pled, *inter alia,*: *"Furthermore, and to the extent plaintiff suggests that a supposed violation by Columbia of the 1810 Charter is a violation of the Federal and State Constitutions, Columbia is a private university and not a "state actor" and therefore is not bound by the New York State and Federal Constitutions. See, Odom v. Columbia University, 906 F. Supp. 188, 195 (S.D.N.Y. 1995) ("Columbia, as a private institution, does not act under color of State law"); Sirohi, supra, ("defendants are not state actors")"*. (Columbia Reply Brief, page 11, App., *infra* 8)

ileges and immunities by the New York State Legislature, cannot have the degree or the privileges revoked by impermissible judicial state action, especially when as here, the state court's decision plainly departs from the legislative scheme. See *Bush* v. *Gore*, 121 S.Ct. 525, 148 L.Ed.2d 388, 69 USLW 4029 (2000). If this Court determines that to be the case, it may grant certiorari based solely on the impermissible judicial state action. See *Shelley* v. *Kraemer* 334 U.S. 1, 14, 68 S.Ct. 836, 842, 92 L.Ed. 1161, 1181 (1948), see also *New York Times Company* v. *Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11L.Ed.2d 686 (1964).

Reasons for Granting The Petition

Obtaining a college degree is a threshold that once crossed changes the individual from that of a student to that of degree-holder. Once the degree is conferred, there is no probationary or conditional status where the degree can be certified or revoked at will. Unlike certain state granted licenses which require the holder to renew the license, remain in good standing and pay a continuing fee, a college degree is final and unconditional. In the State of New York, a university, whether private or public, may only confer a degree through express and limited powers granted to it by the Legislature. See Education Law §226(9), *supra*; see also *1810 Charter*, *supra*. In the State of New York, the Legislature has enacted statutes that vest degree-holders with statutory protection. It is uncontested that Petitioner was conferred a lawful degree by Columbia in 1990. (See official transcript previously released to the U.S. Army, App., *infra* 6). For the past thirteen (13) years Columbia has violated Petitioner's

statutory rights and effectively revoked his degree. In doing so, Columbia not only violated its legislatively enacted charter and the Education Law of the State of New York, but also violated Petitioner's equal protection rights. By condoning Columbia's actions and departing from the statutory provisions enacted by the New York Legislature, the Appellate Division infringed on constitutional legislative authority and violated Petitioner's due process and equal protection rights.

Judge Sidney H. Ashe of the Supreme Court of the State of New York, perhaps best described the importance of a degree in the United States when he held *"[t]he academic degree is still regarded as the passport to success, wealth and happiness, the Lingua Franca on the road of social mobility in America . . . These are values which are worthy of legal protection." State by Lefkowitz* v. *Colorado State Christian College of Church of Inner Power, Inc.*, 346 N.Y.S.2d 482 (N.Y. Sup. 1973). In New York, the Legislature explicitly chose to protect the academic degree and *degree-holder* by legislative enactments that provide that a possessor of a degree *shall* hold all privileges and immunities as those held by others with identical or similar degrees. (*1810 Charter supra*; Education Law § 226(9), *supra*.) Moreover, longstanding controlling case law holds that a university degree confers a privilege. *People* v. *Geneva College*, 5 Wend. 211 (1830). Consequently, the New York State Legislature, in choosing to protect the academic degree, enacted express statutory protection so that *degree-holders* shall be entitled to equal privileges and immunities. The Legislature did not create conditions, classifications or exceptions as between degree-holders, which is readily apparent within the plain meaning of the statutes.

The refusal of a university in New York to certify a degree-holder's degree by release of the transcript clearly interferes with statutory privileges and clearly revokes the degree. Judge Haight of the U.S. District Court in the Southern District of New York held over twenty years ago, *"because of inability to pay one's debts, one is prevented from obtaining a copy of one's transcript, which leads to the inability to provide proof of previous education, which puts obstacles in the way of gaining further education and employment, which leads to an inability to keep current with one's debts."* (emphasis added). *Lee* v. *Board of Higher Education*, 1 B.R. 781, 788 (D.C.N.Y. 1979). Judge Haight concluded that the *"economic consequences of deprivation of a transcript are severe." Lee, supra* at 788. As discussed *infra*, even the Appellate Division conceded that failure to release Petitioner's transcript "compromises" Petitioner's applications to graduate schools.

Columbia's actions, clearly a state action when performing a legislatively delegated power such as conferring a degree, discriminated against Petitioner because of his economic status. The New York State Legislature made no such classification when it granted *all degree-holders* equal privileges and immunities. This Court has held that it will review classifications based on wealth and education in order to determine if the state denied a petitioner equal protection of the laws. *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed 2d 16 (1973). In the instant case, it was not the New York State Legislature that created classifications based on wealth, for it explicitly provided the reverse, it was Columbia performing its legislatively delegated powers who discriminated against the Petitioner because

of his inability to pay Columbia an alleged amount owed "in full" within an arbitrary time frame set by the Financial Aid Office of Columbia. This Court has held, in a case involving wealth classification, that *"a law nondiscriminatory on its face may be grossly discriminatory in its operation."* *Griffen* v. *Illinois*, 351 U.S. 958, 76 S. Ct. 844 (1956) at Footnote 11, citing *Guinn* v. *U.S.*, 238 U.S. 347, 355 S. CT. 956 (1915).

Justice Brandeis said for this Court many years ago that the protection of the Constitution of the United States applies *"whatever the form in which the legislative power of the state is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the state* ***exercising delegated legislative authority*** *. . ."* (emphasis added) *Standard Scale Co.* v. *Farrell*, 249 U.S. 571, 576, 39 S.Ct. 380, 382, 63 L.Ed. 780 (1919). Here, the New York State Legislature expressly granted *degree-holders* equal privileges and immunities, and Columbia and the Appellate Division, by treating Petitioner differently than other *degree-holders*, and in contradiction to an express legislative mandate, have violated the Constitution of the United States. This case goes to the very heart of a citizen's right to equal protection of the laws.

Petitioner, a Reserve Special Forces Captain in the U.S. Army, is currently deployed in an overseas combat unit with a sworn duty to defend and protect the Constitution. The irony is that he is in this position, in part, as a result of Columbia's continued violation of his constitutional and statutory rights.[7] This unlawful action by

[7] The result of Columbia's arbitrary and discriminatory policy is that it prohibits Petitioner from entering graduate school so he might

Columbia was not, and is not, *de minimus*. The consequences for Petitioner have been enormous, impacting his ability to earn a living and pursue his career, and now perhaps placing at risk the very life and liberty he enjoys. Petitioner is currently defending our political and governmental system that constitutionally permits this Court to right what is wrong, however seemingly obscure the issue and however small and inconsequential a petitioner may seem to be in comparison to a state imposing its unequal and unlawful treatment upon him.

I. The New York Statutory Scheme

Prior to the Revolutionary War, Columbia operated as King's College under a Royal Charter granted by Lieutenant Governor De Lancey on October 31, 1754. The original Royal Charter of 1754 created Governors of the College who had power to, *inter alia*, ***"give and grant any such degree and degrees to any of the students of the said College, or any other person or persons by them thought worthy thereof, as are usually granted by any or either of our universities or colleges in that part of our Kingdom of Great Britain called England"***. See *Medical Inst. of Geneva College* v. *Patterson*, 1 Denio 61, aff'd 5 Denio 618 (1845). As can be readily ascertained, the original Royal Charter of King's College *did not* grant *degree-holders* privileges and immunities.

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elevate himself to the next social and economic level, while at the same time certifying his degree to the U.S. Army, a traditional collection pool for poor and underprivileged men and women. Besides being offensive to those who believe in the American rejection of class distinctions, Columbia's actions violate statutory law and the equal protection clause.

On April 13, 1787, the New York State Legislature passed an Act ratifying and confirming the Charter of King's College and changing its name to Columbia College. The 1787 Act also modified the previously enacted 1784 Act which had created the Regents of the State University of New York. The Regents were given power to create state colleges with the same powers as Columbia. (Act of April 13, 1787, 2 R.L. 262, sec. 6 (*Laws of the State of New York, Vol. 1, 1777-1787*, Thomas Greenleaf (New York 1792).) See also *Laws of the State of New York, 1777-1784, Vol. 1*, Weed, Parson and Company, Printers (Albany 1886).[8]

In 1810, the current charter of Columbia was enacted by the New York State Legislature when it passed an Act amending the 1754 Royal Charter and repealing portions of the 1787 Act relating to Columbia. This *1810 Charter* stands today as the current charter governing Columbia University and its Trustees. This legislative enactment delegated degree-conferring powers to the Trustees of Columbia, but, for the first time, explicitly added protections for the degree-holders in Sections VII and VIII which state, in relevant part, that the ***". . . diplomas shall entitle the possessors respectively to all the immunities and privileges which either by usage or statute are allowed to possessors of similar diplomas from any uni-***

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[8] Article 11, Section 2 of the New York State Constitution provides that the Regents are governed by its coporate powers, which may be increased, modified or diminished by the Legislature. McKinney's Const. Art. 11 Section 2, *supra*; see also, *Inst. of the Metropolis* v. *Univ. of State of New York*, 289 N.Y.S. 660, aff'd 291 N.Y.S. 893, aff'd 274 N.Y. 504 (1937).

versity, college or seminary of learning". *1810 Charter, supra* at Sections VII and VIII[9].

This legislative guarantee of equal privileges and immunities to all degree-holders was an explicit change from both the 1754 Royal Charter and the 1787 Act. In 1810, the New York Legislature clearly and intentionally mandated that degree-holders shall be treated equally and no degree-holder could be denied privileges possessed by another degree-holder with a similar college degree.

The New York Legislature subsequently confirmed this mandate when it enacted the same provision in Education Law § 226(9) which applies to all colleges and universities created by the Regents of the University of the State of New York. Section 226(9) states, in relevant part, that "***. . . every certificate and diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any institution of learning***". (Education Law § 226(9), *supra* (derived from Education Law of 1910). See also *People* v. *Geneva College*, *supra*; *St. Lawrence Univ.* v. *Trustees of Theological School of St. Lawrence University*, 282 N.Y.S.2d 746 (1967). The New York statutory scheme mandating that

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[9] See *Black's Law Dictionary, Seventh Edition* (1999 West Group) at pages 668-669 *"Shall – has a duty to; More broadly, is required to . . . "* Id. See also "Entitle. 1. To grant a legal right to or qualify for." Id. at 553.

See *Black's Law Dictionary, supra*, at 1215 *"privileges" – A special right, exemption, or immunity granted to a person or class of persons; an exception to a duty."* and at page 752 – *"immunity" – Having immunity; exempt from a duty or liability."*

all *degree-holders shall* be entitled to equal privileges and immunities is longstanding, clear and unambiguous.

Since 1893, the courts in New York have respected this legislative authority by permitting colleges broad discretion as to discipline, financial matters and academic issues up to, and only *up to, the time a degree is conferred. People ex rel O'Sullivan* v. *New York Law School*, 68 Hun 118, 52 N.Y. St. Rep. 14, 22 N.Y.S. 663, 665 (1st Dept. 1893). Thus, in addition to contradicting express legislative enactments, the Appellate Division's decision deviated from prior judicial decisions that held that a degree confers a privilege and the discretionary power colleges have over students is extinguished once the degree is conferred. See *Geneva College*, *supra*; *O'Sullivan*, *supra*. This "dual-deviation" (statutory and case law) by the state court resulted in Petitioner being deprived of his due process and equal protection rights guaranteed by the Fourteenth Amendment.[10]

II. Columbia's Unlawful Actions

As discussed *supra*, Columbia's actions in granting Petitioner's degree and subsequently refusing to certify his degree to third-parties are state actions since degree-conferring power in the State of New York is a statutorily delegated power. The New York Legislature clearly delegated the degree-conferring power to Columbia in Sections VII and VIII of the *1810 Charter*, *supra*, and

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[10] See also Article 1, Section 11 of the New York State Constitution which provides, in relevant part: *"No person shall be denied the equal protection of the laws of this state or any subdivision thereof . . ." McKinney's Consolidated Laws of New York Annotated Book 2 Constitution*, Article 1, Section 11.

Education Law § 226(9), *supra*. The Education Law makes the exclusiveness of this delegated power clear in Article 5, § 224(4) of the Education Law which states in relevant part that: *"No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person, with intent to deceive, falsely represent himself to have received any such degree. . ." McKinney's, supra*, § 224, at page 125, see *Lefkowitz, supra* at 491-493[11]. Columbia's argument below, that its actions were not state actions and therefore not subject to constitutional restrictions, is simply not sustainable.[12] Degree-conferring power was not only expressly delegated to Columbia, to the Regents and to other colleges, the power was exclusively delegated so that anyone or any organization without such delegation is expressly prohibited by law from conferring a degree.[13] Moreover, Section 219(4) of the Education Law makes it clear that, upon dissolution, the college trustees must file

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[11] These statutes confirm why every graduate school requires an official transcript as the only certification of one's lawful degree and why the release of the transcript is the *primary* privilege of the degree.

[12] The cases cited by Columbia relating to state action do not relate to degree-conferring powers or degree-holders. This Court has held that a private organization is engaging in state action when it performs legislatively delegated duties. Smith, infra.

[13] Compare this legislatively delegated power of Columbia to medical schools such as the College of Physicians and Surgeons in the City of New York and the College Physicians and Surgeons of the Western District whose original charters, unlike Columbia, gave them no power to grant diplomas, but could only recommend students for the degree of doctor of medicine to the Regents of the University of the State of New York. *People ex rel Coventry* v. *Medical Soc. of the State of New York*, 18 Wend. 539 (1836).

the "permanent academic records" (which would include transcripts) with the New York State Education Department. *McKinney's*, *supra*, § 219(4) at page 114. Thus, the transcript itself, as argued below, is a Public Record, not the property of Columbia. (Sheridan Brief, Page 24, App., *infra* 9). Consequently, by refusing to certify Petitioner's lawful degree, which is Public Record, Columbia was clearly engaging in state action.

This Court, in determining that a private organization is acting as a state actor when performing delegated duties, has held that *"[t]he party takes its character as a state agency* ***from the duties imposed upon it by state statutes;*** *the duties do not become matters of private law because they are performed by a political party"*. (emphasis added) *Smith* v. *Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944). Likewise, the New York State Legislature imposed upon Columbia, the Regents and other colleges, the exclusive duty of conferring a *lawful* degree. Consequently, the actions taken by Columbia relating to the degree and its statutory privileges are clearly those of a state actor and subject to the restraints of the Equal Protection Clause of the Fourteenth Amendment and subject to review by this Court especially when Columbia's own charter prohibits enacting any by-law, ordinance or "policy" that violates the U.S. Constitution.

As discussed *supra*, under New York statutory law, once a degree is conferred, the possessor *shall be entitled* to all privileges and immunities as possessed by others with the same degree. By discriminating against Petitioner and treating him differently from other graduates, and subjecting him to a "student policy", Columbia violated its *1810 Charter*, Education Law § 226(9) and Petition-

er's equal protection rights. As a clear reading of the statutes establish, there is no provision in the *1810 Charter* or Education Law § 226(9) that permits Columbia to control, interfere with, or strip away Petitioner's statutory privileges. While Section IX of the *1810 Charter* permits Columbia to enact by-laws or ordinances to further the "design" of the university, Section IX explicitly provides that such by-laws or ordinances *shall not* be inconsistent with, *inter alia*, the Constitution of the United States. Since the *1810 Charter* and Education Law § 226(9) mandate that *degree-holders* shall be treated equally, Columbia, by imposing a "student policy" on Petitioner and stripping him of his statutory privileges, not only violated its own charter, but violated Petitioner's equal protection rights. Moreover, this Court has held that since a legislatively chartered corporation *". . . is the mere creature of the act to which it owes its existence . . . it may correctly be said to be precisely what the incorporating act has made it; to derive all its powers from that act,* ***and to be capable of exerting its faculties only in the manner which that act authorizes"***. (emphasis added) *Bank of U.S.* v. *Dandridge*, 25 U.S. 64, 68 (Mem) (1827) citing and quoting *Head & Armory* v. *The Providence Ins. Co.*, 6 U.S. 127 (Mem), 2 Cranch 127, 2 L.Ed. 229 (1804).

The *1810 Charter* authorizes Columbia to grant degrees. The *1810 Charter* mandates, however, that once granted, the possessor of the degree shall be entitled to equal privileges. There are no exceptions, no conditions and no classifications as between *degree-holders*. This Court has held that *"[t]here can be no reason for implying in a charter . . . a power which is not only not expressed, but is in direct contradiction to its express stipulations"*.

Trustees of Dartmouth College v. *Woodward*, 4 Wheat 518 (1819). Here, Columbia has implied a power which is not only absent from its charter, but is in direct contradiction to the express privileges and immunities entitlement found in Sections VII and VIII of its *1810 Charter*. If a college in New York can strip a *degree-holder* of his lawful privileges, refuse to certify his degree and *de facto* revoke his degree, then the New York Legislature's express language enacted in the *1810 Charter* and later in the Education Law means nothing. If Columbia, as a state actor when conferring and honoring degrees, can be permitted to discriminate against *degree-holders* in direct contradiction to statutory law, then those *degree-holders* who are discriminated against have no equal protection. This Court has held that the laws must be administered equally to all persons within the class so regulated. *Yick Wo* v. *Hopkins*, 6 S.Ct. 1064 (1886). Classifications applied to individuals, when the statute is clear that none have been made part of the statute, forms the very core of unequal treatment that is protected by the Equal Protection Clause of the Fourteenth Amendment. This unlawful, unconstitutional and unequal treatment of Petitioner is precisely what Columbia has engaged in for the past thirteen (13) years.

III. The State Court's Unlawful Judicial State Action

This Court held many years ago that judicial action in private disputes is a form of state action subject to application of the Equal Protection Clause of the Fourteenth Amendment. *Shelley*, *supra*; *New York Times Co.*, *supra*; see also *Barrows* v. *Jackson*, 346 U.S. 249, 735 Ct. 1031, 97 L.Ed. 1586 (1953). As recently as 2000, this Court

held that when a state court interprets a state statute and deviates from the clear statutory scheme, the Court will review the state court decision to determine if the state court has infringed on the Legislature's authority. *Bush* v. *Gore*, 121 S.Ct. 525, *supra* at 534-539 (Rehnquist, C.J. concurring). See also *Stanley* v. *Schwalby*, 16 S.Ct. 754, 764, 162 U.S. 255, 280, 40 L.Ed. 960, 960 (1896), *Fairfax* v. *Hunter*, 7 Cranch 603, 628 (1812) *Martin* v. *Hunter's Lessee*, 14 U.S. 304 (Mem) (1816). ("*In respect to powers granted to the United States, they [state judges] are not independent; they are expressly bound to obedience, by the letter of the constitution; and if they should unintentionally transcend their authority, or misconstrue the constitution, there is no more reason for giving their judgments an absolute and irresistible force, than for giving it to the acts of the other co-ordinate departments of state sovereignty.*") By condoning Columbia's actions, the Appellate Division violated Petitioner's equal protection rights. Furthermore, by judicially revising Sections VII and VIII of the *1810 Charter* and Section 226(9) of the Education Law, the Appellate Division violated Petitioner's right to due process and *expressly* violated Article 11, Section 2 of the New York State Constitution which explicitly reserves to the New York Legislature the right to increase, modify or diminish the Regents' corporate powers. See *McKinney's* Const., Art. 11, § 2 *supra*.

The Appellate Division judicially revised the *1810 Charter* and Education Law § 226(9) by affirmatively holding that there is no difference between a *degree-holder* and a student. The Appellate Division specifically held, *inter alia*, "*We reject plaintiff's argument that as a degree*

holder he is in a fundamentally different position from the plaintiffs in cases holding that a university has no legal obligation to provide a diploma or transcript to a graduating student or former student with outstanding financial obligations to the university." *Sheridan*, 745 N.Y.S.2d, *supra* at 19, App., *infra* 1, at page 38. The New York Legislature, however, did mandate that there is a "fundamental" difference between *degree-holders* and students when it granted *degree-holders* unconditional privileges and immunities once the degree is conferred. Thus, the Appellate Division's holding transcended "*the accepted bounds of statutory interpretation, to the point of being a nonjudicial act and producing new law untethered to the legislative Act in question*". *Bush*, 121 S.Ct., *supra* at 543 (Souter, J dissenting). The Appellate Division not only departed from the legislative authority, it affirmatively held that there is no difference between a *degree-holder* and a student. This holding is a direct repudiation of the statutes which provide that *degree-holders* shall be entitled to equal privileges and immunities. Not only did the Appellate Division condone Columbia's unequal treatment of Petitioner vis-a-vis other *degree-holders*, the Court went a step further and held, in direct contradiction to the statutes, that Petitioner is no different than a student.[14] The Appellate Divi-

[14] The Appellate Division cited New York case law that relates solely to students and *non-degree-holders*. That body of case law followed the *O'Sullivan* doctrine which allows colleges to discipline *students* and withhold diplomas and degrees up to, and only up to, the time a degree is conferred. To that extent, New York case law, until the *Sheridan* case, did not violate the *1810 Charter* or Education Law § 226(9) because the plaintiffs were not statutorily protected degree-holders.

sion's holding deviates so far from proper statutory interpretation "*that what it did cannot properly be called judging*". *Bush*, 121 S.Ct. *supra* at 546. (Ginsburg, J. dissenting).

The Appellate Division violated Petitioner's equal protection rights by treating him not as a *degree-holder*, but as a student (or something else), thereby repudiating statutory enactments and violating Petitioner's due process rights. In addition to violating Petitioner's rights under the Fourteenth Amendment, the Appellate Division increased the New York State Regents' corporate powers under Education Law § 226(9) in direct violation of the New York State Constitution which provides that the Regents' corporate powers may only be increased, modified or diminished by the ***Legislature***. *McKinney's* Const. Art. 11, Section 2, *supra*.

Moreover, while conceding that Columbia's policy "*may compromise plaintiff's applications to graduate schools*", the Appellate Division held that this did not revoke Petitioner's certification because he still "*possesses all of the knowledge and skills represented by the degree*". *Sheridan*, 745 N.Y.S.2d, *supra* at 19, App., *infra*, 1 at 38-39. Why then issue degrees? With the *Sheridan* holding, the Appellate Division has done away with the legal function of a degree. The Appellate Division, while conceding that Petitioner lacks the essential and inherent privilege of a degree (certification of the degree to third-parties), has created a purely fictitious privilege which permits a graduate to certify the degree to himself because he knows that he has all the knowledge and skills represented by the degree. (". . . *while the policy may compromise plaintiff's applications to gradu-*

ate schools, it does not revoke defendant's certification that plaintiff possesses all of the knowledge and skills represented by the degree." *Sheridan*, 745 N.Y.S. 2d , *supra* at 19, App., *infra*, 1 at 38-39). There is no reasonable or ordinary standard of judicial review when, as here, the Appellate Division conceded that Columbia's policy prevents Petitioner from certifying his degree to graduate schools, yet held that this "policy" does not revoke the certification of the Petitioner's degree. If Petitioner cannot certify his degree, then he has no degree and he cannot certify that he has the knowledge and skills represented by the degree. Columbia's withholding of Petitioner's transcript clearly revokes the certification as well as the degree.

The Appellate Division further violated Petitioner's constitutional rights *sub silencio* when it held that Columbia's policy of withholding Petitioner's transcript does not violate the *1810 Charter* or Education Law § 226(9) because the "policy" is expedient for carrying out Columbia's designs.[15] Remarkably, the charter provision that the Appellate Division relied on, Section IX, expressly provides that any by-law or ordinance enacted shall not be inconsistent with, *inter alia*, the Constitution of the United States or the Constitution of the State of New York. As discussed *supra*, Columbia's policy of violating Petitioner's privileges and immunities and treating him differently than other *degree-holders*, clearly violated the

[15] Even if the Appellate Division were to explain why withholding Petitioner's transcript is expedient to Columbia's designs, which the Court did not do, no such policy could violate express provisions of the 1810 Charter nor violate the United States Constitution or New York State Constitution as prohibited by Section IX of the *1810 Charter*.

statutory law and violated Petitioner's equal protection rights. Furthermore, this "policy", as adopted and sanctioned by the Appellate Division, clearly increases the corporate powers of the New York State Regents, thereby violating Article 11, Section 2 of the New York State Constitution which *explicitly* reserves to the Legislature the authority to increase or modify the Regents' powers. Columbia's "policy," therefore, violates Section IX of the *1810 Charter*, the very provision the Appellate Division relied on to circumvent Petitioner's express statutory privileges.

Finally, time-honored charter law established by this Court, and the courts of New York, holds that a by-law, ordinance, regulation or even a so-called "policy", cannot be inconsistent with the very provisions of a corporate charter. *Child* v. *Hudson's Bay Company*, 2 P. Was. 207, 209 (". . . *where the charter gives the company a power to make by-laws, they can only make them in such cases as they are enabled to do by the charter; for such power given by the charter, implies a negative that they cannot make other by-laws.*"). See also *People* v. *Manhattan Co.*, 9 Wend 351 (1832); *People* v. *Utica Ins. Co.*, 15 Johns R. 382; *Dandridge*, 25 U.S. 64, *supra*; *Head & Armory*, 6 U.S. 127, *supra*; *Trustees of Dartmouth College*, 5 Wheat 518, *supra*. See also *Johnson* v. *Hudson River R. Co.* 49 N.Y. 455 (1872). (The New York Court of Appeals held in *Johnson* that when the language of a charter "*is definite and has a precise meaning, it must be presumed to declare the intent of the legislative, and it is not allowable to go elsewhere in search of conjecture to restrict or extend the meaning.*" Id. citing *McCluskey* v. *Cromwell*, 1 Kern 593.)

Thus, besides violating the provisions of New York statutory law, the New York Constitution and the Equal Protection Clause of the Constitution of the United States, the Appellate Division's holding contradicts this Court's historical rule of law that a charter is a sacred contract and a corporation must adhere to the provisions as expressly stated in its charter. *Trustees of Dartmouth College*, 5 Wheat 518, *supra*. When statutes are not adhered to and are revised in such a way as to violate express legislative authority; when a "policy" is used to circumvent express charter provisions; and when a state court supplants itself in place of the Legislature by unconstitutionally increasing certain state powers, all of which result in extinguishing a person's lawful rights and privileges, the state court is in violation of the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

Columbia violated, and continues to violate, Petitioner's equal protection rights by its unequal treatment of him in direct contradiction to the statutory law of the State of New York. The state court, in condoning Columbia's actions and ruling in a manner that deviated from express legislative authority, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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